THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.NO.1002 OF 2007

Between:

M/s Sri Anjaneya Enterprises

…Petitioner

And

The Joint Director of Agriculture, Guntur and another.

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.NO.1002 OF 2007

ORDER:

Petitioner challenges the order dated 13-12-2006 passed by the 2nd respondent, confirming the order dated 17-11-2004 passed by the

1st respondent.

Petitioner is a proprietary concern, dealing in pesticides and insecticides. The 1st respondent initially granted a licence in favour of the petitioner, under the Insecticides Act (for short '*the Act*'), up to 31-12-2005. Thereafter, it was renewed till 31-12-2007. The business is being operated from the same premises, mentioned in the licence.

On 05-10-2004 the Deputy Director of Agriculture, Guntur, issued a show cause notice, dated 12-10-2004 to the petitioner alleging that it had violated the provisions of Section 13 of the Act and required the petitioner to submit its explanation. The petitioner complied with the same and submitted its explanation. The 1st respondent passed an order dated 17-11-2004, cancelling the licence. The appeal preferred before the 2nd respondent was rejected on 31-12-2004. The petitioner challenged the same by filing W.P.No.2162 of 2005. It was noticed that the main ground on which the licence of the petitioner was cancelled is, that certain bills were not signed by the purchasers, and that the 1st respondent ought to have given an opportunity to the petitioner to explain. Accordingly, the writ petition was allowed, and the matter was remanded to the 2nd respondent, duly setting aside the order dated 31-12-2004. It was directed that the petitioner must be given an opportunity to explain its position.

After the remand, the petitioner filed affidavits of the purchasers under the bills, that are in question, and it was pleaded that the absence of signatures on the relevant bills, was due to the inadvertence of the clerk. It was also pleaded that the purchasers were farmers, whose addresses were clearly furnished, and no illegality has taken place. This explanation did not weigh with the 2nd

respondent, and the appeal was rejected, once again. Hence, this writ petition.

Heard the learned counsel for the petitioner and learned Government Pleader for Agriculture.

The proceedings for cancellation of the licence of the petitioner were initiated on three grounds, *viz.,* a) that the licence was obtained in respect of the premises, misrepresenting the facts; b) the stock register was not properly maintained, and c) certain bills of sale do not contain the signatures of the concerned persons.

While the show cause notice was issued by the Deputy Director of Agriculture, the final order was passed by the

1st respondent. The question, as to whether such a course is permissible; does not become relevant, at this stage. On the appeal preferred by the petitioner, having been dismissed,

it approached this Court by filing W.P.No.2162 of 2005. This Court took the view that the first two grounds pressed against the petitioner do not warrant severe action and proceeded to point out the defect of the order passed by the appellate authority. It was held that the only ground, which can be treated as serious, is the one, relating to absence of signatures on the bills, and on finding that the petitioner was not given adequate opportunity on that, the matter was remanded.

After the remand, the petitioner enclosed the affidavits of the persons, who purchased the stock under relevant bills, and pleaded that the failure to take signatures was due to inadvertence of the salesman. The 2nd respondent took the view that since the attestation on the bills did not take place, at the time of sale transaction, the further evidence cannot be taken on record. It is apt to refer to the directions issued by this Court, on the one hand, and the view taken by the 2nd respondent, on the other hand. The relevant portion of the order reads

as under:

> "All this would show that though the petitioner has accepted that it was his mistake in not signing the bills, no enquiry was made into the truth or otherwise of such submission made by the petitioner. Both the authorities have assumed the explanation given by the petitioner as an admission and cancelled the authorization.
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> In this view of the matter, I am of the opinion that the petitioner should have been given an opportunity to show that it was a real mistake on his part in not signing the bills. Such an opportunity was not given in this regard. Therefore, the impugned order dated 17-11-2004 as confirmed by the 2nd respondent vide orders dated 31-12-2004 is liable to be set aside and is accordingly set aside".

After referring to the explanation offered, and the affidavits of the purchasers, of the pesticides, the 1st respondent observed as under:

> "…This request can not be considered, since the transaction of sale will effect only by the attestation of both the seller and purchaser at the time of sale takes place. In this case, the attestation of seller (dealer) has not taken place at the time of sale transaction. Therefore, the further evidence submitted by the Appellant can not be taken into records".

The 1st respondent has virtually rendered the specific direction issued by this Court, nugatory. It would have been a different thing, had he expressed the view, that the affidavits are not genuine, or that he is not satisfied with the explanation. However, he struck to his original stand, despite the specific directions of this Court. The fact, that the bills do not contain the signatures, was clear, and no doubt existed, about it. This Court took note of the same, and directed the matter be examined with reference to fresh evidence. For all practical purposes, the 1st respondent closed the issue by observing that, since

the bills were not signed, on the date of sale, no fresh evidence can be taken into account. This view cannot be appreciated, particularly when the 1st respondent did not express any doubt, about the genuinity of the evidence, produced by the petitioner. The whole basis of enquiry, or appeal, would be the appreciation of evidence, and no authority can declare, that he would not take the evidence into account. Such a course would lead to perversity.

Therefore, the writ petition is allowed, as prayed for, and the impugned order is set aside. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.08-03-2007.

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